

## 1 HOUSE BILL NO. 126

2 INTRODUCED BY K. KELKER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ALCOHOL AND  
5 DRUG ADDICTION; PREVENTING CRIMINALIZATION OF CHEMICAL DEPENDENCY AND PUBLIC  
6 INCAPACITATION; ADDING CHEMICAL DEPENDENCY TO LAWS GOVERNING INVOLUNTARY  
7 COMMITMENT; UPDATING TERMINOLOGY USED TO DESCRIBE ALCOHOL AND DRUG ADDICTION;  
8 ADDING A PROVISION TO THE STATE POLICY ON ALCOHOLISM AND CHEMICAL DEPENDENCY  
9 STATING THAT TREATMENT IS A PRIORITY; AND AMENDING SECTIONS 7-32-4302, 47-1-104, 53-24-102,  
10 53-24-103, 53-24-106, 53-24-107, 53-24-204, 53-24-207, 53-24-209, 53-24-302, 53-24-303, AND 53-24-306,  
11 MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 7-32-4302, MCA, is amended to read:

16 **"7-32-4302. Control of disturbances of the peace.** Within the city or town and within 3 miles of the  
17 limits thereof, the city or town council has power to prevent and punish ~~intoxication~~incapacitation (subject to the  
18 limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct  
19 calculated to disturb the public peace or which are offensive to public morals."  
20

21 **Section 2.** Section 47-1-104, MCA, is amended to read:

22 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at  
23 public expense.** (1) There is a statewide public defender system, which is required to deliver public defender  
24 services in all courts in this state. The system is supervised by the director.

25 (2) The director shall approve a strategic plan for service delivery and divide the state into not more  
26 than 11 public defender regions. The director may establish a regional office to provide public defender services  
27 in each region, as provided in 47-1-215, establish a contracted services program to provide services in the  
28 region, or utilize other service delivery methods as appropriate and consistent with the purposes described in

1 47-1-102.

2 (3) When a court orders the assignment of a public defender, the appropriate office shall immediately  
3 assign a public defender qualified to provide the required services. The director shall establish protocols to  
4 ensure that the offices make appropriate assignments in a timely manner.

5 (4) A court may order assignment of a public defender under this chapter in the following cases:

6 (a) in cases in which a person is entitled to assistance of counsel at public expense because of  
7 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as  
8 follows:

9 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
10 incarceration, as provided in 46-8-101;

11 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
12 40-6-119;

13 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
14 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian  
15 Child Welfare Act, as provided in 41-3-425;

16 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

17 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

18 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

19 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
20 disabled person to a residential facility, as provided in 53-20-112;

21 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in  
22 53-21-116;

23 (ix) for a respondent in a proceeding for the involuntary commitment of a ~~person for alcoholism~~  
24 chemically dependent person, as provided in 53-24-302; and

25 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

26 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense  
27 regardless of the person's financial ability to retain private counsel, as follows:

28 (i) as provided for in 41-3-425;

1 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in  
 2 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction  
 3 Prosecution Act, as provided in 41-5-1607;

4 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on  
 5 Juveniles, as provided in 41-6-101;

6 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent  
 7 for Abortion Act of 2013, as provided in 50-20-509;

8 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
 9 person to a residential facility, as provided in 53-20-112;

10 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

11 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a  
 12 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

13 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental  
 14 disorder of the ward, as provided in 72-5-322; and

15 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

16 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
 17 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
 18 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

19 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public  
 20 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad  
 21 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service  
 22 for the statewide public defender system and does not result in a conflict of interest."  
 23

24 **Section 3.** Section 53-24-102, MCA, is amended to read:

25 **"53-24-102. Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as  
 26 an illness and chemical dependency as illnesses and that ~~alcoholics and intoxicated~~ persons with alcoholism or  
 27 chemical dependency or incapacitated persons may not be subjected to criminal prosecution because of their  
 28 consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they

1 may lead normal lives as productive members of society. Treatment should be priorities for persons with  
 2 alcoholism or chemical dependency."

3

4 **Section 4.** Section 53-24-103, MCA, is amended to read:

5 **"53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

6 (1) ~~"Alcoholic" means a person who has~~ "Alcoholism" means a chronic illness or disorder of behavior  
 7 characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health,  
 8 interpersonal relationships, or economic function of ~~the~~ an individual or the public health, welfare, or safety.

9 (2) "Approved private treatment facility" means a private agency that has as its function the treatment,  
 10 rehabilitation, and prevention of chemical dependency, that meets the standards prescribed in 53-24-208(1),  
 11 and that is approved under 53-24-208.

12 (3) "Approved public treatment facility" means:

13 (a) a treatment agency operating under the direction and control of the department as a state agency  
 14 and approved under 53-24-208; or

15 (b) a treatment agency operating under the direction and control of a local government and approved  
 16 under 53-24-208.

17 (4) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates  
 18 behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug  
 19 dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an  
 20 individual or the public health, welfare, or safety.

21 (5) "Commission on accreditation of rehabilitation facilities" means the organization nationally  
 22 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status  
 23 to a rehabilitation facility that it finds meets its standards and requirements.

24 (6) "Department" means the department of public health and human services provided for in 2-15-  
 25 2201.

26 (7) "Drug" has the meaning provided in 46-1-1103.

27 ~~(7)(8)~~ "Family member" is the spouse, mother, father, child, or member of the household of a  
 28 chemically dependent person whose life has been affected by the actions of the chemically dependent person

1 and who may require treatment.

2 ~~(8) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or~~  
 3 ~~has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision~~  
 4 ~~with respect to a need for treatment.~~

5 (9) "Incapacitated" or "incapacitation" means that a person is impaired by reason of alcohol or drug  
 6 use to the extent that the person lacks sufficient understanding or capacity to make or communicate  
 7 responsible decisions and is incapable of realizing and making a rational decision with respect to the person's  
 8 need for treatment.

9 ~~(9)(10) "Incompetent person" means a person who has been adjudged incompetent by the district~~  
 10 ~~court.~~

11 ~~(10) "Intoxicated person" means a person whose mental or physical functioning is substantially~~  
 12 ~~impaired as a result of the use of alcohol.~~

13 (11) "Prevention" has meaning on the following four levels; ~~these are:~~

14 (a) education to provide information to ~~the~~ school children and the general public relating to chemical  
 15 dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired  
 16 by contact with a chemically dependent person;

17 (b) early detection and recovery from the illness before lasting emotional or physical damage, or both,  
 18 have occurred;

19 (c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full  
 20 disability has been reached;

21 (d) the provision of facility requirements to meet division program standards and improve public  
 22 accessibility for services.

23 (12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the  
 24 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,  
 25 psychological and social services, or vocational evaluation and training or any combination of these services  
 26 and in which the major portion of the services is furnished within the facility.

27 (13) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient  
 28 services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care,

1 vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons,  
2 ~~intoxicated~~incapacitated persons, and family members."

3

4 **Section 5.** Section 53-24-106, MCA, is amended to read:

5 **"53-24-106. Criminal laws limitation.** (1) A county, municipality, or other political subdivision may not  
6 adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes ~~drinking, being a~~  
7 ~~common drunkard, or being found in an~~ intoxicated-incapacitated condition as one of the elements of the  
8 offense giving rise to a criminal or civil penalty or sanction.

9 (2) This section does not affect any law, ordinance, resolution, or rule against drunken driving, driving  
10 under the influence of alcohol or drugs, or other similar offense involving the operation of a vehicle, an aircraft,  
11 a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of  
12 ~~alcoholic beverages~~ alcohol or drugs at stated times and places or by a particular class of persons.

13 (3) This section does not prevent the department from imposing a sanction on or denying eligibility to  
14 applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and  
15 program requirements."

16

17 **Section 6.** Section 53-24-107, MCA, is amended to read:

18 **"53-24-107. Public ~~intoxication-incapacitation~~ not criminal offense.** (1) A person who appears to  
19 be ~~intoxicated-incapacitated~~ in public does not commit a criminal offense solely by reason of being in an  
20 ~~intoxicated-incapacitated~~ condition but may be detained by a peace officer for the person's own protection. A  
21 peace officer who detains a person who appears to be ~~intoxicated-incapacitated~~ in public shall proceed in the  
22 manner provided in 53-24-303 and subsection (3) of this section.

23 (2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a  
24 person who appears to be ~~intoxicated-incapacitated~~ until the person is no longer creating a risk to self or others.

25 (3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's  
26 health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or  
27 other record may not be made to indicate that the person detained under this section has been arrested or  
28 charged with a crime.

1 (4) A peace officer, acting within the scope of the officer's authority under this chapter, is not  
2 personally liable for the officer's actions."  
3

4 **Section 7.** Section 53-24-204, MCA, is amended to read:

5 **"53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

6 (a) accept gifts, grants, and donations of money and property from public and private sources;

7 (b) enter into contracts; and

8 (c) acquire and dispose of property.

9 (2) The department shall:

10 (a) approve treatment facilities as provided for in 53-24-208;

11 (b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update  
12 this plan each biennium;

13 (c) provide for and conduct statewide service system evaluations;

14 (d) distribute state and federal funds to the counties for approved treatment programs in accordance  
15 with the provisions of 53-24-108 and 53-24-206;

16 (e) plan in conjunction with approved programs and provide for training of program personnel  
17 delivering services to persons with a chemical dependency;

18 (f) establish criteria to be used for the development of new programs;

19 (g) provide planning for the optimal use of funds by increasing efficiency of services, ensuring existing  
20 needs are met, and encouraging rural counties to form multicounty districts or contract with urban programs for  
21 services;

22 (h) cooperate with the board of pardons and parole in establishing and conducting programs to  
23 provide treatment for ~~intoxicated~~ incapacitated persons and persons with a chemical dependency in or on  
24 parole from penal institutions;

25 (i) establish standards for chemical dependency educational courses provided by state-approved  
26 treatment programs and approve or disapprove the courses;

27 (j) hold all state-approved facilities, programs, and providers to uniform standards as established by  
28 the department by rule; and

1 (k) assist all interested public agencies and private organizations in developing education and  
2 prevention programs for chemical dependency."  
3

4 **Section 8.** Section 53-24-207, MCA, is amended to read:

5 **"53-24-207. Comprehensive program for treatment.** (1) The department shall establish a  
6 comprehensive and coordinated program for the treatment of chemically dependent persons, ~~intoxicated~~  
7 incapacitated persons, and family members.

8 (2) The program must include:

9 (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general  
10 hospital;

11 (b) inpatient treatment;

12 (c) intermediate treatment;

13 (d) outpatient treatment; and

14 (e) followup services.

15 (3) The department shall provide for adequate and appropriate treatment for ~~alcoholics and~~  
16 ~~intoxicated~~ incapacitated persons admitted under 53-24-301 through 53-24-303.

17 (4) All appropriate public and private resources must be coordinated with and used in the program if  
18 possible.

19 (5) The department shall prepare, publish, and distribute annually a list of all approved public and  
20 private treatment facilities."  
21

22 **Section 9.** Section 53-24-209, MCA, is amended to read:

23 **"53-24-209. Rules for acceptance for treatment.** The department shall adopt rules for acceptance  
24 of persons into the treatment program, considering available treatment resources and facilities, for the purpose  
25 of early and effective treatment of chemically dependent persons, ~~intoxicated~~ incapacitated persons, and family  
26 members. In adopting the rules, the department must be guided by the following standards:

27 (1) If possible, a patient must be treated on a voluntary rather than an involuntary basis.

28 (2) A patient must be initially assigned or transferred to outpatient treatment unless found to require

1 inpatient treatment.

2 (3) An individualized treatment plan must be prepared and maintained on a current basis for each  
3 person.

4 (4) Provision must be made for a continuum of coordinated treatment services so that a person who  
5 leaves a facility or a form of treatment will have available and use other appropriate treatment."  
6

7 **Section 10.** Section 53-24-302, MCA, is amended to read:

8 **"53-24-302. Involuntary commitment of ~~alcoholics~~ chemically dependent persons -- rights.** (1)

9 A person may be committed to the custody of the department by the district court upon the petition of the  
10 person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment  
11 facility. The petition must allege that the person is ~~an alcoholic who~~ chemically dependent and habitually lacks  
12 self-control as to the use of ~~alcoholic beverages-alcohol or drugs~~ and that the person has threatened,  
13 attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on  
14 another or is incapacitated ~~by alcohol~~. A refusal to undergo treatment does not constitute evidence of lack of  
15 judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed  
16 physician who has examined the person within 2 days before submission of the petition unless the person  
17 whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal  
18 must be alleged in the petition. The certificate must set forth the physician's findings in support of the  
19 allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be  
20 the certifying physician.

21 (2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date  
22 the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the  
23 court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other  
24 than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge  
25 of the approved public treatment facility to which the person has been committed for emergency care, and any  
26 other person the court believes advisable. A copy of the petition and certificate must be delivered to each  
27 person notified.

28 (3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at

1 least one licensed physician who has examined the person whose commitment is sought. The person has a  
2 right to have a licensed physician of the person's own choosing conduct an examination and testify on the  
3 person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one  
4 examination and testimony must be paid by the county. The person must be present unless the court believes  
5 that the person's presence is likely to be injurious to the person. The court shall examine the person in open  
6 court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed  
7 physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court  
8 believes that more medical evidence is necessary, the court may make a temporary order committing the  
9 person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

10 (4) If after hearing all relevant evidence, including the results of any diagnostic examination by the  
11 department, the court finds that grounds for involuntary commitment have been established by clear and  
12 convincing evidence, it shall make an order of commitment to the department. The court may not order  
13 commitment of a person unless it determines that the department is able to provide adequate and appropriate  
14 treatment for the person and that the treatment is likely to be beneficial.

15 (5) A person committed under this section must remain in the custody of the department for treatment  
16 for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must  
17 automatically be discharged unless before expiration of the period the department obtains a court order from  
18 the district court of the committing district for the person's recommitment upon the grounds set forth in  
19 subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed  
20 because the person is ~~an alcoholic-chemically dependent and~~ is likely to inflict physical harm on another, the  
21 department shall apply for recommitment if after examination it is determined that the likelihood still exists.

22 (6) A person recommitted under subsection (5) who has not been discharged by the department  
23 before the end of the 90-day period must be discharged at the expiration of that period unless before expiration  
24 of the period the department obtains a court order from the district court of the committing district on the  
25 grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has  
26 been committed because the person is ~~an alcoholic-chemically dependent and~~ is likely to inflict physical harm  
27 on another, the department shall apply for recommitment if after examination it is determined that the likelihood  
28 still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

1           (7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date  
2 for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of  
3 hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment  
4 is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if  
5 different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the  
6 person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as  
7 provided in subsection (3).

8           (8) A person committed to the custody of the department for treatment must be discharged at any  
9 time before the end of the period for which the person has been committed if either of the following conditions is  
10 met:

11           (a) in case of ~~an alcoholic~~ a person who is chemically dependent committed on the grounds of  
12 likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the  
13 likelihood no longer exists; or

14           (b) in case of ~~an alcoholic~~ a person who is chemically dependent committed on the grounds of  
15 incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to  
16 bring about significant improvement in the person's condition, or treatment is no longer adequate or  
17 appropriate.

18           (9) The court shall inform the person whose commitment or recommitment is sought of the person's  
19 right to contest the application, be represented by counsel at every stage of any proceedings relating to the  
20 person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender  
21 Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If  
22 the court believes that the person needs the assistance of counsel, the court shall order the office of state  
23 public defender, provided for in 2-15-1029, to assign counsel for the person regardless of the person's wishes.  
24 The person whose commitment or recommitment is sought must be informed of the right to be examined by a  
25 licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests  
26 examination by a physician, the court shall employ a licensed physician.

27           (10) If a private treatment facility agrees with the request of a competent patient or the patient's parent,  
28 sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to

1 the private treatment facility.

2 (11) A person committed under this section may at any time seek to be discharged from commitment  
3 by writ of habeas corpus or other appropriate means.

4 (12) The venue for proceedings under this section is the place in which the person to be committed  
5 resides or is present."  
6

7 **Section 11.** Section 53-24-303, MCA, is amended to read:

8 **"53-24-303. Treatment and services for ~~intoxicated~~ incapacitated persons.** (1) A person who  
9 appears to be ~~intoxicated~~ incapacitated in a public place and to be in need of help may be assisted to the  
10 person's home, an approved private treatment facility, or other health care facility by the police.

11 (2) A peace officer acting within the scope of the officer's authority under this chapter is not personally  
12 liable for the officer's actions."  
13

14 **Section 12.** Section 53-24-306, MCA, is amended to read:

15 **"53-24-306. Records of chemically dependent persons, ~~intoxicated~~ incapacitated persons, and  
16 family members.** (1) The registration and other records of treatment facilities ~~shall~~ must remain confidential  
17 and are privileged to the patient.

18 (2) Notwithstanding subsection (1), the department may make available in accordance with Title 50,  
19 chapter 16, part 5, or other applicable law information from patients' records for purposes of research into the  
20 causes and treatment of chemical dependency. Information under this subsection may not be published in a  
21 way that discloses patients' names or other identifying information."  
22

- END -